

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jun 12, 2025**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RAUL F.,<sup>1</sup>

Plaintiff,

v.

FRANK BISIGNANO,  
Commissioner of Social Security,<sup>2</sup>

Defendant.

No. 1:24-cv-3198-EFS

**ORDER REVERSING THE  
ALJ'S DENIAL OF BENEFITS,  
AND REMANDING FOR  
MORE PROCEEDINGS**

Plaintiff Raul F. asks the Court to reverse the Administrative Law Judge's (ALJ) denial of Title 2 benefits. As is explained below, by

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<sup>1</sup> For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

<sup>2</sup> Frank Bisignano was confirmed as the Commissioner of Social Security on May 6, 2025. Pursuant to Federal Rule of Civil Procedure 25(d) and 42 U.S.C. § 405(g), he is substituted as the Defendant.

1 not calling a medical expert, the ALJ erred when evaluating Plaintiff's  
2 symptom reports and the medical opinions. This matter is remanded  
3 for further proceedings.

## 4 I. Background

5 In April 2017, Plaintiff applied for benefits, claiming disability  
6 beginning March 15, 2017, because of right-sided numbness and pain,  
7 injuries to the right hand, depression, and chronic headaches.<sup>3</sup> The  
8 agency denied benefits at the initial and reconsideration level.<sup>4</sup> On  
9 November 14, 2018, Plaintiff and his attorney attended a hearing  
10 before ALJ Timothy Mangrum, at which Plaintiff and a vocational  
11 expert testified.<sup>5</sup> On January 18, 2019, ALJ Mangrum issued an  
12 unfavorable decision, which denied benefits.<sup>6</sup> Plaintiff filed a request  
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16 <sup>3</sup> AR 356-362, 387.

17 <sup>4</sup> AR 134, 146.

18 <sup>5</sup> AR 42-60.

19 <sup>6</sup> AR 103-123.

1 for review and on August 27, 2020, the Appeals Council remanded the  
2 case for further proceedings.<sup>7</sup>

3 On July 21, 2021, Plaintiff and his attorney appeared for a second  
4 hearing before ALJ Mangrum at which Plaintiff and a vocational  
5 expert testified.<sup>8</sup> On October 12, 2021, ALJ Mangrum issued a second  
6 unfavorable decision denying benefits.<sup>9</sup> On December 13, 2022, the  
7 Appeals Council denied Plaintiff's request for review.<sup>10</sup> Plaintiff filed  
8 suit in this Court and on June 26, 2023, the Court remanded the case  
9 for further proceedings based upon a stipulation by the parties.<sup>11</sup> The  
10 Appeals Council remanded the case for a hearing before another ALJ  
11 based upon the Court's order.<sup>12</sup>

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14 <sup>7</sup> AR 124-131.

15 <sup>8</sup> AR 61-81.

16 <sup>9</sup> AR 15-41, 802-828.

17 <sup>10</sup> AR 1-8, 829-836.

18 <sup>11</sup> AR 841-2, 843.

19 <sup>12</sup> AR 849-856.

1 On June 11, 2024, Plaintiff appeared with his attorney before  
2 ALJ Deborah Van Vleck, but the hearing was rescheduled because it  
3 started 45 minutes late and the ALJ did not think there was sufficient  
4 time to take testimony.<sup>13</sup> On August 13, 2024, Plaintiff again appeared  
5 with his attorney for a hearing before ALJ Van Vleck at which Plaintiff  
6 and a vocational expert testified.<sup>14</sup> On September 9, 2024, ALJ Van  
7 Vleck issued a partially favorable decision that found Plaintiff to be  
8 disabled as of October 27, 2022.<sup>15</sup>

9 For the period prior to October 27, 2022, the ALJ found Plaintiff's  
10 alleged symptoms were "not fully supported prior to October 27,  
11 2022."<sup>16</sup> As to the medical opinions, the ALJ found:

- 12 • the reviewing opinions of Deborah Baylor, MD, and the  
13 treating opinions of Onel Martinez, DO, and Catherine Choi,  
14 DO, to be not persuasive.

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16 <sup>13</sup> AR 762-768.

17 <sup>14</sup> AR 769-801.

18 <sup>15</sup> AR 728-761.

19 <sup>16</sup> AR 742-744.

- the reviewing opinions of state agency consultants Dan Donahue, MD, and Bruce Eather, PhD, to be not persuasive.<sup>17</sup>

As to the sequential disability analysis, the ALJ found:

- Plaintiff met the insured status requirements through December 31, 2022.
- Step one: Plaintiff had not engaged in substantial gainful activity since March 15, 2017, the alleged onset date.
- Step two: Since the alleged onset date of disability, March 15, 2017, through the established onset date of October 27, 2022, Plaintiff has had the following severe impairments:
  - amputation of the distal phalanx of middle finger of right hand, degenerative changes of fourth digit of right hand, overuse syndrome affecting the intrinsic musculature of right hand, and mild degenerative disc disease of the cervical, thoracic, and lumbar areas of the spine.
- Step two: Beginning on the established onset date of disability, October 27, 2022, Plaintiff has had the following severe

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<sup>17</sup> AR 744-745.

1           impairments: amputation of the distal phalanx of middle  
2           finger of right hand, degenerative changes of fourth digit of  
3           right hand, overuse syndrome affecting the intrinsic  
4           musculature of right hand, and mild degenerative disc disease  
5           of the cervical, thoracic, and lumbar areas of the spine as well  
6           as degenerative joint disease of the right knee.

- 7           • Step three: Plaintiff did not have an impairment or  
8           combination of impairments that met or medically equaled the  
9           severity of one of the listed impairments.

- 10          • RFC: Prior to October 27, 2022, Plaintiff had the RFC to  
11          perform light work except:

12           [he] was limited to frequent reaching, handling, and  
13           fingering with the right upper extremity. [Plaintiff] had  
14           no limitations with the left upper extremity. [Plaintiff]  
            was limited to occasional climbing of ladders, ropes, and  
            scaffolds.

- 15          • RFC: Since October 27, 2022, Plaintiff had the RFC to perform  
16          sedentary work except:

17           [he] was limited to frequent reaching, handling, and fingering  
18           with the right upper extremity. [Plaintiff] had no limitations  
19           with the left upper extremity. [Plaintiff] was limited to  
            occasional climbing of ladders, ropes, or scaffolds.

- 20          • Step four: Plaintiff has no past relevant work.

- Step five: Prior to October 27, 2022, Plaintiff was capable of performing work available in the general economy such as a cleaner/housekeeper (DOT 323.687-014), cafeteria attendant (DOT 311.677-010), and garment sorter (DOT 222.687-014).<sup>18</sup>

Plaintiff timely requested review of the ALJ's decision by this Court.<sup>19</sup>

## II. Standard of Review

The ALJ's decision is reversed "only if it is not supported by substantial evidence or is based on legal error" and such error impacted the nondisability determination.<sup>20</sup> Substantial evidence is

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<sup>18</sup> AR 738-749.

<sup>19</sup> ECF No. 1.

<sup>20</sup> *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. § 405(g); *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) ), *superseded on other grounds by* 20 C.F.R. § 416.920(a) (recognizing that the court may not reverse an ALJ decision due to a harmless error—one that "is inconsequential to the ultimate nondisability determination").

1 “more than a mere scintilla but less than a preponderance; it is such  
2 relevant evidence as a reasonable mind might accept as adequate to  
3 support a conclusion.”<sup>21</sup>

### 4 **III. Analysis**

5 Plaintiff argues the ALJ erred by rejecting Plaintiff’s symptom  
6 testimony, by finding the opinions of the State agency medical  
7 consultant and the treating sources unpersuasive and making her own  
8 interpretation of the medical evidence, and by finding Plaintiff’s knee  
9 impairment and chronic headaches not severe prior to October 27,  
10 2022. In contrast, the Commissioner maintains that the ALJ’s findings

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12 <sup>21</sup> *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978,  
13 980 (9th Cir. 1997)). *See also Lingenfelter v. Astrue*, 504 F.3d 1028,  
14 1035 (9th Cir. 2007) (The court “must consider the entire record as a  
15 whole, weighing both the evidence that supports and the evidence that  
16 detracts from the Commissioner’s conclusion,” not simply the evidence  
17 cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d  
18 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does  
19 not indicate that such evidence was not considered[.]”).



1 were supported by substantial evidence and that any possible error is  
2 harmless. As is explained below, by not calling a medical expert to offer  
3 testimony as to the progression of Plaintiff's knee impairment and its  
4 associated symptoms, the ALJ erred when evaluating Plaintiff's  
5 reported symptoms.

6 **A. Symptom Reports: Plaintiff establishes consequential**  
7 **error.**

8 The ALJ found Plaintiff's statements about the intensity,  
9 persistence, and limiting effect of his symptoms were not fully  
10 supported by the record for the time period prior to October 27, 2022.<sup>22</sup>  
11 Plaintiff argues that the ALJ erred by arbitrarily concluding that  
12 Plaintiff's knee impairment became severe on the date that he fell  
13 because subsequent surgery established that he was suffering from  
14 advanced Grade 3 to 4 chondromalacia and that because this condition  
15 was gradual, not sudden, expert testimony was needed to determine  
16 when it became disabling. As is discussed below, the ALJ's date-of-  
17 disability finding is not supported by substantial evidence given the

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19 <sup>22</sup> AR 742-744.

ALJ's failure to call a medical examiner to offer an opinion based on the complete record, as to the date that Plaintiff's chondromalacia would reasonably have been expected to limit him to sedentary rather than light exertional activities.

1. Standard

The ALJ must identify what symptom claims are being discounted and clearly and convincingly explain the rationale for discounting the symptoms with supporting citation to evidence.<sup>23</sup> This requires the ALJ to "show his work" and provide a "rationale . . . clear enough that it has the power to convince" the reviewing court.<sup>24</sup> Factors the ALJ may consider when evaluating the intensity, persistence, and limiting effects of a claimant's symptoms include: 1) objective medical evidence, 2) daily activities; 3) the location, duration, frequency, and intensity of pain or other symptoms; 4) factors that precipitate and aggravate the symptoms; 5) the type, dosage, effectiveness, and side effects of any medication the claimant takes or has taken to alleviate

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<sup>23</sup> *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

<sup>24</sup> *Id.* at 499.

1 pain or other symptoms; 6) treatment, other than medication, the  
2 claimant receives or has received for relief of pain or other symptoms;  
3 and 7) any non-treatment measures the claimant uses or has used to  
4 relieve pain or other symptoms.<sup>25</sup>

5 2. Plaintiff's Reported Symptoms

6 Plaintiff testified that he was having knee problems at the time  
7 that he filed his application in 2017 and was not able to stand on his  
8 feet for very long.<sup>26</sup>

9 The medical records reflect that Plaintiff reported chronic pain in  
10 his right knee from October 2017 through the date of the decision. On  
11 October 30, 2017, Plaintiff was seen at Central Washington Family  
12 Medicine by Patrick Vigil, MD.<sup>27</sup> Dr. Vigil noted: "Patient words: He is  
13 here to discuss several issues right knee and leg pain, started about a  
14 month ago, bending makes it worse as does prolonged physical activity.

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16 <sup>25</sup> 20 C.F.R. §§ 404.1529(c)(2), (3), 416.929(c). *See also* 3 Soc. Sec. Law  
17 & Prac. § 36:26, Consideration of objective medical evidence (2019).

18 <sup>26</sup> AR 798.

19 <sup>27</sup> AR 599-600.

1 Felt in the back of the thigh, no knee swelling. Also discussed chronic  
2 headaches, without aura, treated with short acting analgesics but does  
3 not remember ever having a prophylactic medication. Occurs once a  
4 week or more, stable course, moderate severity and interference with  
5 daily activities.”<sup>28</sup>

6 At an office visit with Margaret Russell, MD, of Central  
7 Washington Family Medicine, on January 16, 2020, Dr. Russell noted a  
8 history of varicose veins of legs, lateral epicondylitis, obesity, knee  
9 pain, chronic pain of right upper extremity, prediabetes, chronic  
10 tension headaches, and fatigue.<sup>29</sup>

11 At a visit on November 7, 2021, Dr. Vigil noted that there was no  
12 swelling, minimal crepitus, and limited extension bilaterally.<sup>30</sup>  
13 Dr. Vigil noted chronic knee pain and diagnosed bilateral chronic knee  
14 pain likely secondary to osteoarthritis.<sup>31</sup>

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16 <sup>28</sup> AR 600.

17 <sup>29</sup> AR 713.

18 <sup>30</sup> AR 600-601.

19 <sup>31</sup> AR 601.

1 On October 28, 2022, Plaintiff presented to Joan Knight, MD, of  
2 the Yakima Medical Center ER with complaints that he had fallen the  
3 day prior and landed on his right knee.<sup>32</sup> Plaintiff reported that prior to  
4 the fall he had been given a brace to wear on his knee and had been  
5 taking ibuprofen and Tylenol, and that he was feeling pain and tingling  
6 in his knee.<sup>33</sup> On examination, Plaintiff had no effusion and full range  
7 of motion of the knee, but it was point tender and X-Rays showed small  
8 effusion without fracture or dislocation.<sup>34</sup> Dr. Knight diagnosed a  
9 medial collateral ligament sprain.<sup>35</sup>

10 An MRI of the right knee performed on December 30, 2022,  
11 indicated mild arthritic changes with thinning of the cartilage and  
12 moderate joint effusion, with an impression of a radial tear involving  
13 the posterior horn of the medial meniscus, a subtle radial tear  
14 involving the apex posterior horn of the lateral meniscus versus chronic

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16 <sup>32</sup> AR 1095.

17 <sup>33</sup> *Id.*

18 <sup>34</sup> *Id.*

19 <sup>35</sup> AR 1096.

1 degeneration, and some increased signal in the region of the posterior  
2 horn lateral meniscus inferior fascicle which may represent fascicle  
3 injury, localized joint fluid.<sup>36</sup>

4 On July 3, 2023, Dr. Griffiths performed a diagnostic arthroscopy  
5 with partial medial meniscectomy and partial chondroplasty of medial  
6 femoral condyle, right knee.<sup>37</sup> The preoperative diagnosis was a  
7 symptomatic medial meniscus tear of the right knee and the post-  
8 surgical diagnosis was minor mid medial meniscus tear to the leading  
9 edge, small radial flap tear with extensive grade 3, possibly small areas  
10 of grade 4, near full-thickness chondromalacia involving almost the  
11 entire medial femoral condyle with relatively normal pristine lateral  
12 compartment, intact ACL and some thinning grade 2-3 at the trochlear  
13 groove.<sup>38</sup>In his operative report, Dr. Griffiths noted extensive grade 3  
14 chondromalacia to the medial femoral condyle.<sup>39</sup>

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16 <sup>36</sup> AR 1102-1103.

17 <sup>37</sup> AR 1098.

18 <sup>38</sup> AR 1098.

19 <sup>39</sup> AR 1100.

1 On September 6, 2023, Orthopedist Gene Griffiths, MD, ordered  
2 physical therapy for the right knee as well as Synvisc injections with a  
3 notation that Plaintiff was status post right knee meniscectomy.<sup>40</sup>

4 On September 9, 2023, Catherine Choi, DO, completed a medical  
5 report form for Plaintiff.<sup>41</sup> She said she treated Plaintiff from  
6 2016/2017 to present.<sup>42</sup> She said that he had right hand and shoulder  
7 pain; right knee pain, status-post meniscectomy; chronic back pain;  
8 minimal degenerative spondylosis; and primary osteoarthritis of the  
9 right knee.<sup>43</sup> Dr. Choi said that Plaintiff's symptoms were decreased  
10 right hand grip strength, and inability to stand too long due to back  
11 pain; and that he had been treated with osteopathic manipulation,  
12 ibuprofen/Tylenol, physical therapy, and Synvisc injections in the right  
13 knee.<sup>44</sup>

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15 <sup>40</sup> AR 1087.

16 <sup>41</sup> AR 1089-1091.

17 <sup>42</sup> AR 1089.

18 <sup>43</sup> *Id.*

19 <sup>44</sup> *Id.*

3. ALJ's Reasons and Analysis

The ALJ gave very little reasoning regarding Plaintiff's complaints of right knee pain and limitation prior to October 27, 2022, and never actually used the word knee but rather discussed Plaintiff's gait in general. She noted as follows:

Examinations from October 2018 showed the claimant had mild tenderness to palpation of the thoracic and lumbar areas of the spine, slow and antalgic gait, limited range of motion to the cervical and lumbar areas of the spine, and positive lumbar compression and distraction testing on the right (Exhibit 13F/18-19 & 30). One examination from October 2018 showed the claimant had grossly intact lower extremity motor and sensory function as well as normal grip strength bilaterally (Id./30). Imaging of the spine revealed mild degenerative changes in the thoracic and lumbar areas of the spine (Exhibit 12F).<sup>45</sup>

She additionally noted:

Physical therapy notes from November 2018 showed the claimant reported improvement in walking because his walking increased from 15 minutes to 1 hour (Exhibits 13F/6 and 14F/2). The physical therapist indicated the claimant was progressing well and had improvement in range of motion of the trunk (Id.).<sup>46</sup>

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<sup>45</sup> AR 743.

<sup>46</sup> AR 744.



1 As to the period after October 27, 2022, the ALJ articulated the  
2 following reasoning:

3 The record showed that on October 28, 2022 the claimant  
4 sought treatment for right knee pain (Exhibit 23F/4). At  
5 that visit, the claimant reported the knee pain started after  
6 he fell on October 27 (Id.). The examination showed the  
7 claimant had full range of motion of both lower extremities  
8 but point tenderness to the medial collateral aspect of the  
9 right knee (Id.). Initially, the claimant was diagnosed with a  
10 medial collateral ligament sprain of the knee (Id./5).

11 However, the claimant continued to complain of knee pain  
12 and December 2022 MRI of the right knee revealed findings  
13 that suggested a radial tear involving the posterior horn of  
14 the medial meniscus (Exhibit 23F/11-12). The claimant had  
15 a partial medial meniscectomy with partial chondroplasty of  
16 the medial femoral condyle of the right knee in July 2023  
17 (Id./7). The claimant was diagnosed with osteoarthritis of  
18 the right knee (Exhibit 21F). Despite surgery, the claimant  
19 continued to complain of right knee pain and 2024 x-ray  
20 showed the claimant had grade 2-3/4 early mild  
21 degenerative change to the knee (Exhibit 26F/2).<sup>47</sup>

22 4. The ALJ's Consideration of the Medical Opinions

23 The ALJ considered each of the three medical opinions regarding  
24 Plaintiff's physical limitations and found all three unpersuasive.

25 On September 7, 2017, State agency consultant Debra Baylor,  
26 MD, reviewed Plaintiff's file and opined that Plaintiff would have the  
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28 <sup>47</sup> AR 746.

1 ability to occasionally lift and carry up to 50 pounds, to frequently lift  
2 and carry up to 25 pounds, to stand or walk for up to 6 hours in an  
3 eight-hour day, and to sit for up to 6 hours in an eight-hour day.<sup>48</sup> The  
4 records reviewed by Dr. Baylor did not include records commencing in  
5 October 2017 regarding right knee pain.<sup>49</sup>

6 As noted above, on September 9, 2023, Catherine Choi, DO,  
7 completed a medical report form for Plaintiff.<sup>50</sup> She opined that as a  
8 result of his right hand and shoulder pain; right knee pain, status-post  
9 meniscectomy; chronic back pain; minimal degenerative spondylosis;  
10 and primary osteoarthritis of the right knee, Plaintiff would be limited  
11 to performing work at the sedentary level.<sup>51</sup>

12 5. Analysis

13 The ALJ did not properly articulate her consideration of  
14 Plaintiff's allegations of knee pain from October 2017 to October 2022.

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16 <sup>48</sup> AR 98-100.

17 <sup>49</sup> AR 96-97.

18 <sup>50</sup> AR 1089-1091.

19 <sup>51</sup> *Id.*

1 As noted above, the ALJ focused her analysis of Plaintiff's complaints  
2 regarding his right knee to the period after October 27, 2022. Her  
3 consideration of that issue was crucial to her decision, as it was a  
4 finding that Plaintiff was limited by his knee injury that rendered him  
5 to be able to perform only sedentary work and thereby disabled  
6 pursuant to the medical-vocational guidelines.<sup>52</sup> The ALJ stated:

7 The combination of the claimant's severe impairments with  
8 the abnormal examination findings as well as the claimant's  
9 need for surgery to the right knee supports limiting the  
10 claimant to sedentary work instead of light work.<sup>53</sup>

11 With regard to the period prior to October 27, 2022, the ALJ  
12 found that Dr. Baylor's findings were not persuasive, noting the  
13 following:

14 The prior administrative findings from the State agency,  
15 Debra Baylor, M.D., are not persuasive (Exhibit 4A). Dr.  
16 Baylor supported their findings by discussing the claimant's  
17 allegations and examination findings (Id.). However, the  
18 imaging studies showing the claimant had degenerative  
19 changes to the lumbar and thoracic spine and examinations  
20 showing tenderness to palpation of the thoracic and lumbar  
21 spine and limited range of motion to the lumbar spine  
22 supports limiting the claimant to light work as well as

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23 <sup>52</sup> AR 746-747.

24 <sup>53</sup> AR 746.

1 supports limiting the claimant to occasional climbing of  
2 ladders, ropes, and scaffolds (Exhibits 9F/2; 12F; 13F/18-19  
3 & 30; 15F/5; and 20/29). Furthermore, the periodic  
4 examinations showing normal strength to the right upper  
5 extremity contradicts limiting the claimant to occasional  
6 fingering (Exhibits 11F/15 and 13F/30).<sup>54</sup>

7 In discussing Dr. Baylor's opinions, the ALJ failed to consider  
8 that Dr. Baylor's review of the record was performed approximately  
9 one month prior to Plaintiff's first reported symptoms of right knee  
10 pain.<sup>55</sup>

11 Similarly, the ALJ failed to consider that Dr. Choi's medical  
12 report was rendered in September 2023, after it was determined that  
13 Plaintiff suffered from grade 3-4 chondromalacia in his right knee.<sup>56</sup>

14 When addressing the period after October 27, 2022, the ALJ  
15 stated the following:

16 The record showed that on October 28, 2022 [Plaintiff]  
17 sought treatment for right knee pain (Exhibit 23F/4). At  
18 that visit, [Plaintiff] reported the knee pain started after he  
19 fell on October 27 (Id.). The examination showed [Plaintiff]  
20 had full range of motion of both lower extremities but point

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21 <sup>54</sup> AR 744.

22 <sup>55</sup> *Id.*

23 <sup>56</sup> AR 744-745.

1 tenderness to the medial collateral aspect of the right knee  
2 (Id.). Initially, [Plaintiff] was diagnosed with a medial  
3 collateral ligament sprain of the knee (Id./5). However,  
4 [Plaintiff] continued to complain of knee pain and December  
5 2022 MRI of the right knee revealed findings that suggested  
6 a radial tear involving the posterior horn of the medial  
7 meniscus (Exhibit 23F/11-12). [Plaintiff] had a partial  
8 medial meniscectomy with partial chondroplasty of the  
9 medial femoral condyle of the right knee in July 2023  
10 (Id./7). [Plaintiff] was diagnosed with osteoarthritis of the  
11 right knee (Exhibit 21F). Despite surgery, [Plaintiff]  
12 continued to complain of right knee pain and 2024 x-ray  
13 showed the claimant had grade 2-3/4 early mild  
14 degenerative change to the knee (Exhibit 26F/2).<sup>57</sup>

15 The ALJ erred by failing to consider the treatment sought by  
16 Plaintiff prior to October 28, 2022, as well as the consistent complaints  
17 made by Plaintiff of pain in his right knee. The ALJ did not consider  
18 that the treatment notes from the period prior to October 27, 2022,  
19 were consistent with those of October 28, 2022. When examined on  
20 October 28, 2022, Plaintiff reported pain and tingling in the knee and  
21 had no bruising or effusion swelling but was tender at the medial  
22 collateral aspect.<sup>58</sup> When Plaintiff first reported symptoms of knee pain

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23 <sup>57</sup> AR 746.

24 <sup>58</sup> AR 1095.

1 in October 2017 there was no swelling but there was limited range of  
2 motion.<sup>59</sup> When Plaintiff was seen by Dr. Vigil in November 2021, he  
3 continued to report knee pain and had crepitus and limited extension.<sup>60</sup>

4 The ALJ additionally erred in stating that Plaintiff's diagnosis of  
5 advanced chondromalacia was based upon a March 2024 X-ray.<sup>61</sup> The  
6 diagnosis of grade 3-4 chondromalacia was made on July 3, 2023, based  
7 upon the results of arthroscopic surgery.<sup>62</sup> Moreover, an MRI of the  
8 knee in December 2022 indicated arthritic changes, thinning of the  
9 cartilage, radial tears, and chronic degeneration.<sup>63</sup> The ALJ's  
10 impression that advanced chondromalacia was not identified until 2024  
11 is error, as it was identified as early as 2022.

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15 <sup>59</sup> AR 600.

16 <sup>60</sup> AR 601.

17 <sup>61</sup> AR 746.

18 <sup>62</sup> AR 1100.

19 <sup>63</sup> AR 1102-1103.

1       There is no dispute that as of December 2022 to July 2023  
2 Plaintiff was diagnosed with a degenerative condition and that he was  
3 diagnosed with severe degenerative changes.

4       “Social Security proceedings are inquisitorial rather than  
5 adversarial. It is the ALJ's duty to investigate the facts and develop the  
6 arguments both for and against granting benefits[.]”<sup>64</sup> The ALJ has an  
7 affirmative duty to assist the claimant in developing the record “when  
8 there is ambiguous evidence or when the record is inadequate to allow  
9 for proper evaluation of the evidence.”<sup>65</sup>

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11 <sup>64</sup> *Sims v. Apfel*, 530 U.S. 103, 110-11 (2000).

12 <sup>65</sup> *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001); *see*  
13 *also Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983) (per curiam)  
14 (“In Social Security cases the ALJ has a special duty to fully and fairly  
15 develop the record and to assure that the claimant's interests are  
16 considered. This duty exists even when the claimant is represented by  
17 counsel.”) (citation omitted). At the same time, “the ALJ is the final  
18 arbiter with respect to resolving ambiguities in the medical evidence.”  
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1 The record indicates that by October 2022 Plaintiff was suffering  
2 from advanced degenerative changes in his right knee. The record is  
3 unclear to an untrained individual, however, at what point Plaintiff's  
4 degenerative conditions would have been expected to have impacted his  
5 ability to perform work above the sedentary exertional level. As noted  
6 above, the only medical opinion rendered that considered the issue is  
7 Dr. Choi's opinion which limited Plaintiff to sedentary work, but even  
8 that opinion is unclear as to the date on which the restriction to  
9 sedentary work would apply.

10 It has been held in this Circuit that an ALJ may not substitute  
11 her lay interpretation of raw medical data in making an RFC  
12 assessment in lieu of a qualified expert's medical opinion.<sup>66</sup>

13 The Court concludes that given the lack of medical opinion  
14 evidence regarding the progression of Plaintiff's degenerative condition  
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19 <sup>66</sup> *Penny v. Sullivan*, 2 F.3d 953, 958 (9th Cir. 1993)



1 the ALJ erred in failing to either order an updated consultative  
2 examination<sup>67</sup> or call medical expert to testify at the hearing.<sup>68</sup>

3 The ALJ's finding that Plaintiff's symptom reports were "not  
4 entirely consistent" with the record is not supported by substantial  
5 evidence. The ALJ's decision not to call a medical expert to testify at  
6 the hearing and offer an opinion based on the more recent medical  
7 records, before discounting Plaintiff's symptom reports contributed to  
8 this error.<sup>69</sup> While an ALJ is given the discretion to determine whether  
9 to call a medical expert to "clarify and explain the evidence or help  
10 resolve a conflict because the medical evidence is contradictory,  
11 inconsistent, or confusing" or there are "question(s) about the etiology  
12 or course of a disease and how it may affect the claimant's ability to  
13 engage in work activities at pertinent points in time," the ALJ  
14 consequentially erred by not exercising this discretion to call a medical

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16 <sup>67</sup> 20 C.F.R. § 404.1517,

17 <sup>68</sup> 20 C.F.R. §§ 404.1519, 404.1519a.

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19 <sup>69</sup> Program Operations Manual System, HA 01250.034.

1 expert to resolve these conflicts/questions and instead proceeded  
2 herself to interpret the medical record.

3 **B. Medical Opinions: the ALJ must reconsider on remand.**

4 Because this matter is being remanded due to the ALJ's errors  
5 when evaluating Plaintiff's symptom reports, the ALJ is to reevaluate  
6 the medical opinions on remand. The ALJ is to be mindful that  
7 Dr. Baylor's opinion was rendered in 2017, just prior to Plaintiff's  
8 initial treatment for right knee pain.

9 **C. Other Issues: these are rendered moot.**

10 Because the Court has remanded the case for further development  
11 of the record, the other issues raised are rendered moot.

12 **D. Remand: further proceedings**

13 Plaintiff seeks a remand for payment of benefits. However,  
14 further development is necessary for a proper disability determination,  
15 including both the development of the medical record and either  
16 ordering a new consultative examination by a qualified medical  
17 provider, who is to be given a copy of sufficient longitudinal medical  
18 records to aid that examiner in reaching an opinion as to the  
19 progression of Plaintiff's degenerative condition, and/or calling a

1 medical expert qualified to testify as to the expected progression of  
2 such condition.<sup>70</sup> The ALJ is to then reconsider the medical evidence,  
3 Plaintiff's symptom reports, and reevaluate the sequential process.

#### 4 **IV. Conclusion**

5 Plaintiff establishes the ALJ erred. The ALJ is to develop the  
6 record and reevaluate—with meaningful articulation and evidentiary  
7 support—the sequential process.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. The ALJ's nondisability decision is **REVERSED**, and this  
10 **matter is REMANDED to the Commissioner of Social**  
11 **Security for further proceedings pursuant to**  
12 **sentence four of 42 U.S.C. § 405(g).**

13 2. The Clerk's Office shall **TERM** the parties' briefs, **ECF**  
14 **Nos. 8 and 12**, enter **JUDGMENT** in favor of **Plaintiff**,  
15 and **CLOSE** the case.

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18 <sup>70</sup> See *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2018); *Garrison*  
19 *v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014).

1 IT IS SO ORDERED. The Clerk's Office is directed to file this  
2 order and provide copies to all counsel.

3 DATED this 12<sup>th</sup> day of June 2025.

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EDWARD F. SHEA  
6 Senior United States District Judge  
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